No. 94-1809

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.
and MATSUSHITA HOLDING CORPORATION,

Petitioners,

—v.—

LAWRENCE EPSTEIN, *et al.*,

Respondents.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.
and MATSUSHITA HOLDING CORPORATION,

Petitioners,

—v.—

WALTER MINTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION OF THE BUSINESS ROUNDTABLE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

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MOTION OF THE BUSINESS ROUNDTABLE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 37 of the Rules of this Court, The Business Roundtable ("The Roundtable") respectfully moves for leave to file the accompanying brief as *amicus curiae* in support of the Petition. Petitioners have consented to the filing of the brief in support of the Petition; respondents have not.

INTEREST OF THE BUSINESS ROUNDTABLE

The Roundtable is an association of corporate chief executive officers who examine public policy issues that affect the economy and develop positions which seek to reflect sound economic and social principles. The Roundtable includes representation from approximately 220 large corporations. Those corporations embrace a wide spectrum of enterprises—such as manufacturing, the extractive industries, banking, retailing, insurance, transportation and communications—and are located throughout the United States.

The Roundtable believes that the interests of American business are closely intertwined with those of the American public, because the American public is directly involved with business as consumers, employees, investors and suppliers. The Roundtable's analysis of the significance and consequences of the decision below thus provides a broad and important perspective which it believes will assist the Court. As a representative of hundreds of large corporations, The Roundtable has a unique familiarity with the class action mechanism and the wide scope of actions encompassed by state and federal class action settlements. As set forth in the accompanying amicus brief, The Roundtable is concerned that the decision of the Court of Appeals for the Ninth Circuit creates great uncertainty for the finality of numerous class action settlements and will, if not corrected, significantly impede the ability to settle such disputes in the future.

In submitting the accompanying amicus brief supporting the petition for a writ of certiorari, The Roundtable wishes to

explain why, from its perspective and the perspective of efficient judicial administration, the issues raised by the Ninth Circuit's decision are of such overriding importance as to warrant certiorari review. The Roundtable believes that this perspective will assist the Court in its consideration of the Petition and therefore respectfully moves for leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

/s/ IRA M. MILLSTEIN

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BRIEF FOR THE BUSINESS ROUNDTABLE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

Pursuant to Rule 37 of the Rules of this Court, this brief is respectfully submitted, in support of the Petition, by *amicus curiae* The Business Roundtable. The consent of the parties to the filing of this brief has been requested. Petitioners have given consent; respondents have not.

INTEREST OF THE AMICUS CURIAE

The Business Roundtable is an association of chief executive officers of approximately 220 major corporations representing virtually every major business sector in the United States, which examines public policy issues that affect the economy and develops positions which seek to reflect sound economic and social principles. Because members of The Business Roundtable have substantial familiarity with class action settlements—whose integrity and finality have in many cases been called into question by the Ninth Circuit's decision—The Business Roundtable and its members have a substantial interest in the Court's resolution of the questions presented by the Petition.

SUMMARY OF ARGUMENT

Settlement, efficiency and finality are three bedrock goals of our civil justice system. They assume special importance in complex class action litigation, in which an array of claims may be brought on behalf of literally thousands of plaintiffs located throughout the country. In this context, our preference for settlement, the dictates of judicial economy and the need for finality have given rise to the widely accepted principle that the settlement of a class action—federal or state—binds all class members with respect to all claims released, so long as the settlement has received judicial scrutiny and comports with due process.

The Ninth Circuit's decision below severely undermines this fundamental principle. It places an inapposite "jurisdictional" constraint on the scope of class action settlements with the admonition that "a court's jurisdiction to extinguish claims by class settlement should not exceed its jurisdiction to extinguish claims by adjudication." *Epstein* v. *MCA, Inc.*, 50 F.3d 644, 664 (9th Cir. 1995). This new constraint, however, has no basis in the jurisprudence of this Court. To the contrary, parties have long been able to effectuate class action settlements without regard to whether the court before which those parties appeared would otherwise have jurisdiction to adjudicate the settled claims. The question is one of contract—not jurisdiction.

The Ninth Circuit recognized that contractual principles govern the scope of releases with respect to "the settlement of traditional litigation by individual parties," *id.* at 666, but refused to apply these principles to class actions because of its view that "the settlement of a class action is fundamentally different from the settlement of traditional litigation." *Id.* The Ninth Circuit, however, cited no case law, statutory or rule authority for its determination not to apply contractual principles to class action settlements; nor did it argue that applying such principles would violate due process. Instead, the court below simply fashioned its own law in refusing to enforce the release of exclusively federal claims in the state class action settlement before it. Moreover, in doing so, the Ninth Circuit ignored the fact that the principal reason offered for this new limitation on class action settlements—that such settlements are subject to judicial approval while private settlements are not—militates toward *greater* solicitude for the finality and enforcement of class action settlements, rather than new, unfounded constraints on their contractual scope.

Uncorrected, the Ninth Circuit's decision will yield serious and untoward consequences for both the state and federal civil justice system. First, the decision retroactively calls into question the finality and repose of any class action settlement that released claims over which the settling court did not have jurisdiction and which are not yet time-barred. It thus may

spur a wave of new litigation over claims that were, until the Ninth Circuit's decision, unequivocally resolved in class action settlements that had received the final approval of the courts. Second, the decision will make the settlement of future class actions—both state and federal—considerably more difficult to achieve. Because it will often be the case that no court has jurisdiction over all claims and parties, global class action settlements will become increasingly rare. Further, the litigation in different forums of multiple class actions involving the same parties will proliferate—an extremely disturbing result from the standpoint of judicial administration and the already substantial burdens of class action litigation.

This Court should grant certiorari to resolve the disabling uncertainty created by the Ninth Circuit's departure from accepted principles of settlement and class action law. If not reversed, the decision below will have destructive effects on the ability to settle not only class actions involving the federal securities laws, but also class action settlements involving antitrust, environmental, and numerous other federal and state statutes in which there is exclusive jurisdiction in only one group of courts.

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE LONG-STANDING RULE THAT ANY CLAIM CAN BE CONTRACTUALLY RELEASED IN A LITIGATION SETTLEMENT

In its decision below, the Ninth Circuit ruled, contrary to the decisions of other Circuits, that class action settlements cannot release claims which are not subject to the jurisdiction of the court approving the settlement. *Epstein* v. *MCA, Inc.*, 50 F.3d 644 (9th Cir. 1995). As a result, the Ninth Circuit refused to give effect to the contractual release of federal

securities claims in a Delaware class action settlement agreement because those claims could not have been adjudicated by the Delaware state court. The Ninth Circuit made this ruling despite the fact that of the 10,000 or more class members who were permitted to opt out of the settlement, only 19 chose to do so. The decision will thus allow those thousands of class members to enjoy the benefits of the Delaware class action settlement, but still repudiate the release of federal securities claims that was an unequivocal part of the quid-pro-quo for that settlement. Such a result, which is not based upon any authority, severely undermines the law of both settlements and class actions.[1]

A. It Has Always Been The Law That Parties Can Finally Settle Claims In One Jurisdiction Even Where Those Claims Could Not Be Adjudicated In That Jurisdiction

It is well-established that parties are permitted to release and settle any claims they choose regardless of where those claims are pending, or whether those claims could be adjudicated in the court presiding over the settlement.[2] Until the

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[1] The Ninth Circuit held that a state court could approve the release of exclusively federal claims that would have been extinguished by the issue preclusive effect of an adjudication of the state claims. 50 F.3d at 664. This ruling, however, only compounds the problems caused by the decision below since it severely limits the contractual scope of class action releases, without any basis for doing so, and creates even greater uncertainty with respect to the scope of claims being released.

[2] Thus, a settlement reached in one state court often releases claims subject to the laws of another state. *See, e.g., Steiner* v. *Sithe-Energies L.P.*, 1988 WL 36133 (Del. Ch. April 4, 1988) (Delaware state court approving settlement of class action releasing claims pending in California state court); *Mendelson Bros. Factors, Inc.* v. *Sachs*, 1 N.Y.S.2d 838 (1st Dep't 1938), *aff'd*, 17 N.E.2d 459 (1938) (shareholders' derivative action settled and approved by Delaware state court barred action in New York state courts). Similarly, a settlement reached in a state court may preclude an action asserting federal claims in a federal court. *See, e.g., Sandler Associates, L.P.* v. *BellSouth Corp.*, 818 F.

Ninth Circuit's decision below, therefore, courts have not hesitated to broadly approve the release of claims in a settlement agreement, regardless of whether those claims were subject to the jurisdiction of the approving court. *See Grimes* v. *Vitalink Communications Corp.*, 17 F.3d 1553 (3d Cir.), *cert. denied*, 115 S. Ct. 480 (1994); *Nottingham Partners* v. *Trans-Lux Corp.*, 925 F.2d 29 (1st Cir. 1991).[3]

The policy behind approving the broad release of settled claims is clear: to facilitate and encourage the settlement of disputes which would otherwise require prolonged and burdensome litigation. *See, e.g., Williams* v. *First Nat'l Bank*,

Supp. 695, 701 (D. Del. 1993), *aff'd*, 26 F.3d 123 (3d Cir.), *cert. denied*, 115 S. Ct. 481 (1994) (settlement of state court class action arising out of proxy statement releasing all claims that might be asserted in connection with the litigation foreclosed federal action framing previous allegations as violations of federal law).

[3] *See also In re VMS Securities Litigation*, 21 F.3d 139 (7th Cir. 1994) (finding that it was "irrelevant" whether federal court had subject matter jurisdiction over state law claim that it released where objectors chose not to opt out of settlement); *Class Plaintiffs* v. *City of Seattle*, 955 F.2d 1268, 1288 (9th Cir.), *cert. denied*, 113 S. Ct. 408 (1992) ("[I]t was not necessary for the district court to actually exercise subject matter jurisdiction over the claims to approve their release."); *TBK Partners, Ltd.* v. *Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982); *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981), *cert. denied*, *CFS Continental, Inc.* v. *Adams Extract Co.*, 456 U.S. 998 (1982) (even if "the court does not have power to adjudicate a claim, it may still 'approve release of that claim as a condition of settlement' ") (*quoting Abramson* v. *Pennwood Investment Corp.* 392 F.2d 759, 762 (2d Cir. 1968)); *Sandler*, 818 F. Supp. at 704; *Gabelli* v. *Sikes Corp.*, 1990 WL 213119, *5 (S.D.N.Y. Dec. 14, 1990) ("[T]he Second Circuit has explicitly held that although a state court cannot adjudicate a federal claim, 'it is within its power . . . to approve the release of that claim as a condition of settlement of the state action.' ") (citations omitted); *Lowenschuss* v. *Resorts Int'l, Inc.*, 1989 U.S. Dist. LEXIS 7407 (E.D. Pa. June 29, 1989), *aff'd*, 947 F.2d 936 (3d Cir. 1991); *Seagoing Uniform Corp.* v. *Texaco, Inc.*, 705 F. Supp. 918, 923 (S.D.N.Y. 1989) ("[I]t is, of course, true that a state court has authority to approve a settlement that compromises claims within the exclusive jurisdiction of federal courts . . . .").

216 U.S. 582, 595 (1910) ("[C]ompromises of disputed claims are favored by the courts . . . ."); *Marek* v. *Chesny*, 473 U.S. 1, 10 (1985) ("[S]ettlements rather than litigation will serve the interests of plaintiffs as well as defendants.").[4] Indeed, settlement agreements are " 'highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts . . . and preventing lawsuits.' " *United Airlines, Inc.* v. *McDonald*, 432 U.S. 385, 401 (Powell, J., dissenting), *reh'g denied*, 434 U.S. 989 (1977) (*quoting Pearson* v. *Ecological Science Corp.*, 522 F.2d 171, 176 (5th Cir. 1975) (*quoting D.H. Overmyer Co.* v. *Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971))).

For the above-stated reasons, if settlement releases are clear and entered into without mistake or fraud—as was the case here—they should be enforced according to their terms. *See, e.g., Ruskay* v. *Waddell*, 552 F.2d 392, 398 (2d Cir. 1977), *cert. denied*, 434 U.S. 911 (1977). As explained by the court in *Ruskay*:

> In an era of ever-increasing caseloads, the settlement of complex lawsuits is a welcome development. Without it, judicial administration would prove an impossible task. Thus, strong policy considerations require that what all parties thought to be a closed matter remain so. One who gives a general release has had his opportunity to press his claim . . . . *Once the decision to settle is made, a party must abide by it.*

Id. (emphasis added).

[4] *See also McDermott, Inc.* v. *AmClyde*, 114 S. Ct. 1461, 1468 (1994) (parties seek settlement "to avoid litigation costs, to reduce uncertainty, and to maintain ongoing commercial relationships"); *St. Louis Mining and Milling Co.* v. *Montana Mining Co.*, 171 U.S. 650, 656 (1898).

B. The Ninth Circuit's Announcement Of A New Jurisdictional Constraint On Class Action Settlements Is An Unwarranted Departure From Established Class Action Law

The Court of Appeals below acknowledged the applicability of the above-stated principles to *individual* settlements and releases, but then went on to hold—without citing any supporting authority—that class action settlements could not be similarly enforced. 50 F.3d at 666-67. Specifically, the Court of Appeals stated that because class members are not all present before the court and judicial approval is required of a class action settlement, such settlements could not include claims that were beyond the jurisdiction of the approving court to adjudicate. *Id.* at 667. The Roundtable believes that this reasoning—which is not based on any case, statutory or rule authority, or principle of due process—is flawed.

Throughout its history, the principal purposes of the class action mechanism have remained the same: to promote "the efficiency and economy of litigation." *General Tel. Co. of Southwest* v. *Falcon*, 457 U.S. 147, 159 (1982); *American Pipe & Constr. Co.* v. *Utah*, 414 U.S. 538, 553, *reh'g denied*, 415 U.S. 952 (1974); 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 1.01 at 1-3 (3d ed. 1992). By combining similarly situated litigants into one class, and permitting settlement, a class action can "achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated . . . ." Fed. R. Civ. P. 23 Advisory Committee Notes to 1966 Amendment; *United States Parole Com.* v. *Geraghty*, 445 U.S. 388, 403 (1980).[5] Because class actions are designed to facilitate settlements on a large scale and conserve judicial resources, the importance of the release as a final and binding contract is even more

[5] *See also Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 809 (1985); 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1754 (1986); 1 *Newberg on Class Actions* § 1.01 at 1-18; Thomas A. Dickerson, *Class Actions: The Law Of 50 States* § 1.01[2] (1988).

important in the class action context than it is for individual lawsuits. *See, e.g. Air Lines Stewards & Stewardesses Ass'n* v. *Trans World Airlines, Inc.*, 630 F.2d 1164, 1167 (1980), *aff'd, Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982) (the preference for settlement "has particular force regarding class action lawsuits"). Indeed, under current law, the vast majority of class actions have been able to settle before trial.[6]

It is true, as the Ninth Circuit points out, that class action settlements are different from individual settlements in that additional procedural protections, including the requirement of court approval, are provided to satisfy due process concerns. 50 F.3d at 667. However, that difference makes it more, not less, appropriate to enforce the release of *all* claims discharged as part of a judicially approved class action settlement. Indeed, to comport with due process, members of a class are provided with a host of procedural protections to ensure that any class action settlement is reasonable and fair—protections not afforded in non-class actions. *See generally Phillips Petroleum*, 472 U.S. at 808-14. In the class at issue here, these protections included the right to opt out of the class action settlement—a right which only 19 class members out of thousands decided to utilize. It can hardly be said that it is unfair to require the remaining class members who chose to accept the benefits of the settlement to be bound by the release of securities law claims which was an express and integral part of that settlement.

The federal and state rules governing class actions, plus the requirements of due process set forth by this Court in *Phillips Petroleum*, establish the proper limits of class action settlements. The Ninth Circuit improperly imposed its own additional limitation without any authority for doing so.

[6] One study indicates that approximately 71% of class actions settle prior to judgment. Thomas M. Jones, *An Empirical Examination of the Resolution of Shareholder Derivative and Class Action Lawsuits*, 60 B.U.L. Rev. 542, 544-47 (1980), *cited in Franklin* v. *KayPro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989), *cert. denied, Franklin* v. *Peat Marwick Main & Co.*, 498 U.S. 890 (1990).

Nor can the Ninth Circuit's decision be justified by any doubts it may have had about the competence or ability of state court judges properly to review a class action settlement releasing both state and exclusively federal claims. "[A] state judge's resolution of a factual issue will be presumed to be correct unless the factfinding *procedure* employed by the state court was not adequate." *Swain* v. *Pressley*, 430 U.S. 372, 383 (1977) (emphasis added). As Justice Scalia explained:

> It would be a strange constitution that regards state courts as second-rate instruments for the vindication of federal rights and yet makes no mandatory provision for lower federal courts (as our Constitution does not). And it would be an unworkable constitution that requires redetermination in federal courts of all issues of pervasive federal constitutional law that arise in state-court litigation. Absent indication to the contrary, *state courts should be presumed to have applied federal law as faithfully as federal courts.*"

Withrow v. *Williams*, 113 S. Ct. 1745, *reh'g denied*, 113 S. Ct. 3066 (1993) (Scalia, J., concurring in part, dissenting in part) (emphasis added). There is simply no basis to impose an unprecedented jurisdictional limitation on the scope of class action settlements approved by state courts.

II. IF NOT REVERSED, THE NINTH CIRCUIT'S DECISION WILL HAVE A DISABLING AND DESTRUCTIVE EFFECT ON CLASS ACTION SETTLEMENTS

If not corrected, the Ninth Circuit's decision may well lead to a deluge of litigants seeking to re-open class action claims that were finally and conclusively settled long ago. For, as long as the statute of limitations has not run on any class claims which are beyond the approving court's jurisdiction, class members would be free to repudiate any release of those claims included in a class action settlement. This would be true not only as to securities law class actions, but also as to

numerous other class action settlements in which the approving state court did not have jurisdiction to adjudicate the exclusively federal claims being released.[7]

In all previous class action settlements, the parties have properly relied upon the fact that once the settlement received final judicial approval, all settled claims were released—whether or not those claims were within the jurisdiction of the approving court to adjudicate. This substantial reliance interest will be destroyed if the decision below stands and class members are permitted to accept the benefits of a class action settlement without being bound to the release of claims that was the quid-pro-quo for that settlement.

Further, the decision below will have the additional harmful effect of making it more difficult to settle class actions in the future. Under the jurisdictional constraint announced by the Ninth Circuit, class action representatives often will be unable to release *all* of their claims in a single settlement. To the contrary, whenever there is any chance that an exclusively federal claim could be brought against the defendants by the class, it will be impossible for the class action representatives to settle that claim in state court as part of an overall settlement. Similarly, a class action brought in federal court will not be able to release all claims of the class unless a determination is made that the federal court has subject matter jurisdiction over all of the claims being released. For example, a class action settlement in federal court would not be able to release any state law claim that does not meet the requirements of federal diversity or supplemental jurisdiction.[8] Indeed, in some cases, it is possible that no one court in

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[7] *See, e.g.*, 15 U.S.C. §§ 15, 26 (claims under antitrust statutes); 15 U.S.C. § 78aa (claims under Securities Exchange Act); 28 U.S.C. § 1338(a) (claims under patent and copyright acts); 29 U.S.C. § 1132(e)(i) (certain claims under Employee Retirement Income Security Act); 42 U.S.C. § 9613(b) (claims under Comprehensive Environmental Response, Compensation, and Liability Act).

[8] *See* 28 U.S.C. § 1332; 28 U.S.C. § 1367.

the country would have jurisdiction over all claims that could be asserted by the class. Multiple class actions and duplicative litigation would thus be impossible to avoid.

In sum, the decision below calls into question the viability and finality of class action settlements which include a release of claims beyond the jurisdiction of the approving court. This will likely lead to a proliferation of burdensome class action litigation in any area of the law where one court does not have jurisdiction over all possible claims.[9] Simply put:

> To deny effect to a release of claims merely because it was given in an action commenced in state court would invite unprecedented consequences. Such a doctrine would unjustifiably proliferate litigation, defeat legitimate expectations of the settling parties, engender uncertainty among class members and defendants as to their ability to retain the benefits of settlements, discourage settlements altogether and create unwarranted conflict between state and federal courts.

Sandler, 818 F. Supp. at 705.

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[9] The House of Representatives has recently made clear its belief that even the existing system of securities class action litigation needs to be reformed in order to reduce wasteful and burdensome litigation. *See Securities Litigation Reform Act of 1995*, H.R. 1058, 104th Cong., 1st Sess. (1995) (passed by House of Representatives on March 8, 1995). The decision below will substantially exacerbate these problems.

CONCLUSION

For all of the above-stated reasons, as well as those stated in the Petition, this Court should grant certiorari to review the judgment of the Court of Appeals.

Respectfully submitted,

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